

House Bill 206 (COMMITTEE SUBSTITUTE)

By: Representatives Walker of the 107th, Brown of the 69th, Lane of the 158th, and Burns of the 157th

A BILL TO BE ENTITLED

AN ACT

To define and provide for a new category of facilities to be designated as "assisted living facilities" and to include "assisted living facilities - Level I" and "assisted living facilities - Level II" within such category; to amend Code Section 10-1-393 of the Official Code of Georgia Annotated, relating to unfair or deceptive practices, so as to change certain provisions relating to providing personal care services; to amend Code Section 25-2-13 of the Official Code of Georgia Annotated, relating to buildings presenting special hazards, so as to change the listing of buildings and the applicability of certain provisions thereto; to amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to change certain terms and definitions; to provide for admissions, examinations, inspections, employees, licensing, and staffing; to provide for fees and penalties; to provide for licensing of different levels of assisted living facilities; to retain certain liability for personal care homes; to amend Code Section 37-4-21 of the Official Code of Georgia Annotated, relating to respite care for mentally retarded persons, so as to revise certain terms; to amend Code Section 48-13-9 of the Official Code of Georgia Annotated, relating to businesses which are and which are not subject to regulation fees, so as to change a reference; to change various statutory references to "personal care homes" so that they refer to "assisted living facilities"; to provide for related matters; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Code Section 10-1-393 of the Official Code of Georgia Annotated, relating to unfair or deceptive practices, is amended by striking paragraph (26) of subsection (b) thereof and inserting in its place the following:

"(26) With respect to any ~~individual or facility providing personal care services~~ that requires a license in order to be an assisted living facility:"

(A) Any person or entity not duly licensed ~~or registered as a personal care home~~ as an assisted living facility formally or informally offering, advertising to, or soliciting the public for residents or referrals; or

(B) Any ~~personal care home, as defined in subsection (a) of Code Section 31-7-12,~~ assisted living facility offering, advertising, or soliciting the public to provide services:

(i) Which are outside the scope of ~~personal care services~~ that facility's licensed level as an assisted living facility; provided, however, that assisted living facilities licensed at Level II may provide services for residents suitable for Level I; and

(ii) For which it has not been specifically authorized.

Nothing in this subparagraph prohibits advertising by ~~a personal care home~~ an assisted living facility for services authorized by the Department of Human Resources under a waiver or variance pursuant to subsection (b) of Code Section 31-2-4;

~~(C) For purposes of this paragraph, 'personal care' means protective care and watchful oversight of a resident who needs a watchful environment but who does not have an illness, injury, or disability which requires chronic or convalescent care including medical and nursing services.~~

For purposes of this paragraph, the term 'assisted living facility' shall have the same meaning as provided for that term in Code Section 31-7-12. The provisions of this paragraph shall be enforced following consultation with the Department of Human Resources which shall retain primary responsibility for issues relating to licensure of any ~~individual or facility providing personal care services~~ facility that is an assisted living facility."

SECTION 2.

Code Section 25-2-13 of the Official Code of Georgia Annotated, relating to buildings presenting special hazards to persons or property, is amended by striking subparagraph (b)(1)(J) thereof and inserting in its place the following:

"(J) ~~Personal care homes~~ Assisted living facilities required to be licensed as such by the Department of Human Resources and having at least seven beds for nonfamily adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt state minimum fire safety standards for ~~those homes~~ assisted living facilities, and any structure constructed as or converted to a personal care home on or after April 15, 1986, but before January 1, 2006, and any structure constructed as or converted to an assisted living facility as defined in Code Section 31-7-12 on or after January 1, 2006, shall be deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14 and that structure may be required to be furnished with a sprinkler system meeting the

standards established by the Commissioner if ~~he~~ the Commissioner deems this necessary for proper fire safety."

SECTION 3.

Title 31 of the Official Code of Georgia Annotated, relating to health, is amended by adding following paragraph (2) of Code Section 31-6-2, relating to definitions regarding state health planning, a new paragraph (2.1) to read as follows:

"(2.1) 'Assisted living facility' shall have the same meaning as provided in paragraph (4) of subsection (a) of Code Section 31-7-12 for 'assisted living facility - Level II' for the purposes of this chapter only."

SECTION 4.

Said title is further amended by striking paragraph (8) of Code Section 31-6-2, relating to definitions regarding state health planning, and inserting in its place the following:

"(8) 'Health care facility' means hospitals; other special care units, including but not limited to podiatric facilities; skilled nursing facilities; intermediate care facilities; ~~personal care homes~~ assisted living facilities serving 25 or more residents; ambulatory surgical or obstetrical facilities; health maintenance organizations; home health agencies; diagnostic, treatment, or rehabilitation centers, but only to the extent that subparagraph (G) or (H), or both subparagraphs (G) and (H), of paragraph (14) of this Code section are applicable thereto; and facilities which are devoted to the provision of treatment and rehabilitative care for periods continuing for 24 hours or longer for persons who have traumatic brain injury, as defined in Code Section 37-3-1."

SECTION 5.

Said title is further amended by striking paragraph (18) of Code Section 31-6-2, relating to definitions regarding state health planning, and inserting in its place the following:

~~"(18) 'Personal care home' means a residential facility having at least 25 beds and providing, for compensation, protective care and oversight of ambulatory, nonrelated persons who need a monitored environment but who do not have injuries or disabilities which require chronic or convalescent care, including medical, nursing, or intermediate care. Personal care homes include those facilities which monitor daily residents' functioning and location, have the capability for crisis intervention, and provide supervision in areas of nutrition, medication, and provision of transient medical care. Such term does not include:~~

(A) ~~Old age residences which are devoted to independent living units with kitchen facilities in which residents have the option of preparing and serving some or all of their own meals; or~~

(B) ~~Boarding facilities which do not provide personal care. Reserved.~~

SECTION 6.

Said title is further amended by striking subparagraph (B) of paragraph (1) of Code Section 31-7-1, relating to definitions relative to health care facilities, and inserting in its place the following:

"(B) Any building, facility, or place in which are provided two or more beds and other facilities and services that are used for persons received for examination, diagnosis, treatment, surgery, maternity care, nursing care, ~~or personal care~~ personal services, or assistance with activities of daily living or instrumental activities of daily living as defined in Code Section 31-7-12 for periods continuing for 24 hours or longer and which is classified by the department, as provided for in this chapter, as either a hospital, nursing home, or ~~personal care home~~ assisted living facility;".

SECTION 7.

Said title is further amended by striking Code Section 31-7-12, relating to licensing of personal care homes, and inserting in its place the following:

"31-7-12.

(a) As used in this Code section, the term:

~~(1) 'Personal care home' means any dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults who are not related to the owner or administrator by blood or marriage.~~

(1) 'Activities of daily living' means, but is not limited to, eating, bathing, grooming, dressing, toileting, transfer, ambulation, and self-administered medications.

(2) 'Assisted living facility' means any dwelling licensed as an assisted living facility - Level I or assisted living facility - Level II.

(3) 'Assisted living facility - Level I' means any dwelling, whether operated for profit or not, that undertakes through its ownership or management to provide or arrange for the provision of housing and 24 hour watchful oversight, services for persons with disabilities, and assistance with activities of daily living and instrumental activities of daily living for two or more residents who are not related by blood or marriage to the owner or administrator of the home. It is the intent of the General Assembly that the category 'assisted living facility - Level I' replace the former 'personal care home'

1 category and that the department consider this intent when promulgating appropriate rules
2 and regulations.

3 (4) 'Assisted living facility - Level II' means any dwelling, whether operated for profit
4 or not, that undertakes through its ownership or management to provide or arrange for the
5 provision of housing, health care oversight, including monitoring of vital signs and bodily
6 functions, limited nursing services, 24 hour watchful oversight, 24 hour awake staff, and
7 assistance with activities of daily living and instrumental activities of daily living for two
8 or more adults who are not related by blood or marriage to the owner or administrator of
9 the home.

10 (5) 'Instrumental activities of daily living' includes, but is not limited to, preparing meals,
11 shopping, managing money, using the telephone, light housework, and transportation.

12 (6) 'Limited nursing services' means acts that may be performed by licensed practical
13 nurses under Article 2 of Chapter 26 of Title 43, relating to practical nurses, and may be
14 administered on an intermittent basis, as needed, to residents for whom ongoing medical
15 supervision and continuous skilled nursing care are not required.

16 ~~(2)~~(7) 'Personal services' includes, but is not limited to, individual assistance with or
17 supervision of self-administered medication and essential activities of daily living such
18 as eating, bathing, grooming, dressing, and toileting.

19 (b) ~~All personal care homes~~ assisted living facilities shall be licensed as provided for in
20 Code Section 31-7-3, ~~except that, in lieu of licensure, the department may require persons~~
21 ~~who operate personal care homes with two or three beds for nonfamily adults to comply~~
22 ~~with registration requirements delineated by the department. Such registration requirements~~
23 ~~within this category shall authorize the department to promulgate pursuant to Chapter 13~~
24 ~~of Title 50, the 'Georgia Administrative Procedure Act,' reasonable standards to protect the~~
25 ~~health, safety, and welfare of the occupants of such personal care homes; provided,~~
26 however, that the following dwellings are exempt from licensure as assisted living
27 facilities: licensed community living arrangements as defined by Code Section 37-1-20
28 and respite care facilities as defined by Code Section 37-4-21 providing services as
29 authorized by law. Any facility licensed in this state as a personal care home prior to
30 January 1, 2006, shall be deemed to have been licensed as an assisted living facility - Level
31 I. Any sale of a facility deemed to be licensed pursuant to this Code section shall require
32 such facility to apply for and receive a new license. Any new facility in this state first
33 owned or operated on or after January 1, 2006, shall be required to have a new license
34 issued.

35 (c) ~~Upon the designation by the department and with the consent of county boards of~~
36 ~~health, such boards may act as agents to the department in performing inspections and other~~
37 ~~authorized functions regarding personal care homes licensed under this chapter. With~~

1 ~~approval of the department, county boards of health may establish inspection fees to defray~~
2 ~~part of the costs of inspections performed for the department.~~

3 ~~(d)~~ The state ombudsman or community ombudsman, on that ombudsman's initiative or
4 in response to complaints made by or on behalf of residents of a ~~registered or licensed~~
5 ~~personal care home~~ licensed assisted living facility, may conduct investigations in matters
6 within the ombudsman's powers and duties.

7 ~~(e)~~(d) The department shall promulgate procedures to govern the waiver, variance, and
8 exemption process related to ~~personal care homes~~ assisted living facilities pursuant to
9 Chapter 2 of this title. Such procedures shall include published, measurable criteria for the
10 decision process, shall take into account the need for protection of public and individual
11 health, care, and safety, and shall afford an opportunity for public input into the process."

12 SECTION 8.

13 Said title is further amended by striking Code Section 31-7-12.1, relating to unlicensed
14 personal care homes, and inserting in its place the following:

15 "31-7-12.1.

16 (a) A facility shall be deemed to be an 'unlicensed ~~personal care home~~ assisted living
17 facility' if it is unlicensed and not exempt from licensure and:

18 (1) The facility is providing personal services and is operating as a ~~personal care home~~
19 an assisted living facility as those terms are defined in Code Section 31-7-12;

20 (2) The facility is held out as or represented as providing personal services and operating
21 as a ~~personal care home~~ an assisted living facility as those terms are defined in Code
22 Section 31-7-12; or

23 (3) The facility represents itself as a licensed ~~personal care home~~ assisted living facility.

24 ~~(b) Personal care homes in existence on July 1, 1994, which obtain licenses from the~~
25 ~~department no later than October 1, 1994, shall not be subject to the penalties set out in this~~
26 ~~Code section.~~

27 ~~(c) Except as provided in subsection (b) of this Code section, any unlicensed personal care~~
28 ~~home~~ Any unlicensed assisted living facility shall be assessed by the department, after
29 opportunity for hearing in accordance with the provisions of Chapter 13 of Title 50, the
30 'Georgia Administrative Procedure Act,' a civil penalty in the amount of \$100.00 per bed
31 per day for each day of violation of subsection (b) of Code Section 31-7-12. The
32 department shall send a notice by certified mail or statutory overnight delivery stating that
33 licensure is required and including a period for obtaining licensure with an expiration date.
34 Such notice shall be deemed to be constructively received on the date of the first attempt
35 to deliver such notice by the United States Postal Service. ~~For unlicensed personal care~~
36 ~~homes which were not in existence on July 1, 1994, the civil penalty provided by this~~

subsection shall be calculated as beginning on the expiration date of the notice. For unlicensed personal care homes which were in existence on July 1, 1994, the civil penalty provided by this subsection shall be calculated as beginning on the expiration date of the notice or on October 1, 1994, whichever is later. The department shall take no action to collect such civil penalty until after opportunity for a hearing.

(d)(c) The civil penalty authorized by subsection (c)(b) of this Code section shall be doubled if:

(1) The operator of an unlicensed ~~personal care home~~ assisted living facility refuses to seek licensure; or

(2) The operator seeks licensure, the licensure application is denied, and the operator continues to operate the unlicensed ~~personal care home~~ assisted living facility.

(e)(d) The operator of a ~~personal care home~~ an assisted living facility who is assessed a civil penalty in accordance with this Code section may have review of such civil penalty by appeal to the superior court in the county in which the action arose or to the Superior Court of Fulton County in accordance with the provisions of Code Section 31-5-3.

(e) Nothing in this Code section shall relieve from any civil or criminal liability or penalty any personal care home operating without the required license before this Code section becomes effective on January 1, 2006."

SECTION 9.

Said title is further amended by striking paragraph (1) of subsection (a) of Code Section 31-7-111, relating to findings regarding certain authorities for certain facilities for the elderly, and inserting in its place the following:

"(1) There exists in this state a seriously inadequate supply of and a critical need for facilities which can furnish the comprehensive services required by elderly persons in a single location, including, without limitation, residential care and the types of services provided in skilled nursing homes, intermediate care homes, and ~~personal care homes~~ (hereinafter assisted living facilities referred to as 'residential care facilities for the elderly');".

SECTION 10.

Said title is further amended by striking paragraphs (1), (4), (5), (6), (10), (11), and (15) of Code Section 31-7-250, relating to definitions regarding records checks for personal care home employees, and inserting in their respective places the following:

"(1) 'Assisted living facility' means a home required to be licensed under Code Section 31-7-12.

1 (1.1) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of
2 whether an appeal of the conviction has been sought."

3 "(4) 'Director' means the chief administrative or executive officer or manager of an
4 assisted living facility.

5 (5) 'Employee' means any person, other than a director, utilized by a ~~personal care home~~
6 an assisted living facility to provide personal services to any resident on behalf of the
7 ~~personal care home~~ assisted living facility or to perform at any facilities of the ~~personal~~
8 ~~care home~~ assisted living facility any duties which involve personal contact between that
9 person and any paying resident of the ~~personal care home~~ assisted living facility.

10 (6) 'Facility' means real property of a ~~personal care home~~ an assisted living facility where
11 residents reside."

12 "(10) 'License' means the permit or document issued by the department to authorize the
13 ~~personal care home~~ assisted living facility to which it is issued to operate a facility under
14 this chapter.

15 (11) '~~Personal care home~~' or '~~home~~' means a home required to be licensed or permitted
16 ~~under Code Section 31-7-12~~. Reserved."

17 "(15) 'Regular license' means a permit which will remain in effect for the ~~personal care~~
18 ~~home~~ assisted living facility, until and unless the facility ceases to operate or revocation
19 proceedings are commenced."

20 SECTION 11.

21 Said title is further amended by striking paragraph (2) of Code Section 31-8-51, relating to
22 long-term care ombudsman definitions, and inserting in its place the following:

23 "(2) 'Long-term care facility' means any skilled nursing home, intermediate care home,
24 or ~~personal care home~~ assisted living facility now or hereafter subject to regulation and
25 licensure by the department."

26 SECTION 12.

27 Said title is further amended by striking paragraph (3) of Code Section 31-8-81, relating to
28 definitions regarding abuse of residents of long-term care facilities, and inserting in its place
29 the following:

30 "(3) 'Long-term care facility' or 'facility' means any skilled nursing home, intermediate
31 care home, ~~personal care home~~ assisted living facility, or community living arrangement
32 now or hereafter subject to regulation and licensure by the department."

SECTION 13.

Said title is further amended by striking Code Section 31-8-132, relating to definitions regarding remedies for personal care home residents, and inserting in its place the following: "31-8-132.

As used in this article, the term:

(1) 'Administrator' means the manager designated by the governing body of ~~a personal care home~~ an assisted living facility as responsible for the day-to-day management, administration, and supervision of the ~~personal care home~~ assisted living facility, who may also serve as on-site manager and responsible staff person except during periods of his or her own absence.

(1.1) 'Assisted living facility' means a facility required to be licensed under Code Section 31-7-12.

(2) 'Community ombudsman' means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(3) 'Governing body' means the board of trustees, the partnership, the corporation, the association, or the person or group of persons who maintain and control ~~a personal care home~~ an assisted living facility and who are legally responsible for the operation of the ~~home~~ facility.

(4) 'Legal surrogate' means a duly appointed person who is authorized to act, within the scope of the authority granted under the legal surrogate's appointment, on behalf of a resident who is adjudicated or certified incapacitated. No member of the governing body, administration, or staff of ~~a personal care home~~ an assisted living facility or any affiliated ~~personal care home~~ assisted living facility or their family members may serve as the legal surrogate for a resident unless that resident is a family member.

~~(5) 'Personal care home' or 'home' means a facility as defined in Code Section 31-7-12.~~
Reserved.

(6) 'Representative' means a person who voluntarily, with the resident's written authorization, may act upon the resident's direction with regard to matters concerning the health and welfare of the resident, including being able to access personal records contained in the resident's file and receive information and notices pertaining to the resident's overall care and condition. No member of the governing body, administration, or staff of ~~a personal care home~~ an assisted living facility or any affiliated ~~personal care home~~ assisted living facility or their family members may serve as the representative for a resident.

(7) 'Resident' means a person who resides in ~~a personal care home~~ an assisted living facility.

(8) 'State ombudsman' means the state ombudsman established under Code Section 31-8-52."

SECTION 14.

Code Section 37-4-21 of the Official Code of Georgia Annotated, relating to respite care for mentally retarded persons, is amended by striking subsection (c) thereof and inserting in its place the following:

"(c) An admission for respite care shall be for no longer than two weeks, provided that a person may be admitted for additional periods of respite care; provided, further, that there shall be no more than two admissions for respite care within any six-month period, counted from the first day of such an admission. Any such admission which exceeds limits provided in this Code section must be in accordance with the procedure in Code Section 37-4-20 or 37-4-40. This Code section shall not apply when the person sought to be admitted is living in a nursing home or ~~personal care home~~ assisted living facility, as defined in ~~paragraph (2) of Code Section 43-27-1~~ Code Sections 43-27-1 and 31-7-12, respectively."

SECTION 15.

Code Section 48-13-9 of the Official Code of Georgia Annotated, relating to businesses which are and which are not subject to regulatory fees, is amended by striking paragraph (14) of subsection (b) thereof and inserting in its place the following:

"(14) Nursing homes and ~~personal care homes~~ assisted living facilities;"

SECTION 16.

The following Code sections of the Official Code of Georgia Annotated are amended by striking the terms "a personal care home," "Personal care home," "personal care home," "Personal care homes," and "personal care homes," wherever they occur and inserting in their respective places the terms "an assisted living facility," "Assisted living facility," "assisted living facility," "Assisted living facilities," and "assisted living facilities,":

- (1) Code Section 16-5-23, relating to simple battery;
- (2) Code Section 16-5-23.1, relating to battery;
- (3) Code Section 16-6-5.1, relating to sexual assault of persons in custody;
- (4) Code Section 26-4-5, relating to pharmacy definitions;
- (5) Code Section 31-7-3, relating to the requirement for permits to operate institutions;
- (6) Code Section 31-7-112, relating to definitions regarding authorities for facilities for the elderly;
- (7) Code Section 31-7-258, relating to changes in personal care home directors;

- 1 (8) Code Section 31-7-259, relating to employment at personal care homes with
2 temporary licenses;
- 3 (9) Code Section 31-7-300, relating to definitions governing private home care provider
4 laws;
- 5 (10) Code Section 31-7-305, relating to exempt services;
- 6 (11) Code Section 31-7-307, relating to certificates of need;
- 7 (12) Code Section 31-8-52, relating to the establishment of the long-term care
8 ombudsman;
- 9 (13) Code Section 31-8-130, relating to the creation of the "Remedies for Residents of
10 Personal Care Homes Act";
- 11 (14) Code Section 31-8-131, relating to legislative findings and intent;
- 12 (15) Code Section 31-8-134, relating to grievance procedures;
- 13 (16) Code Section 31-8-135, relating to hearings and transfer of residents;
- 14 (17) Code Section 31-8-136, relating to actions for damages;
- 15 (18) Code Section 31-8-137, relating to temporary restraining orders;
- 16 (19) Code Section 31-8-138, relating to failure to validly license as a defense;
- 17 (20) Code Section 31-8-139, relating to mandamus;
- 18 (21) Code Section 31-8-181, relating to exempt individuals and hospitals;
- 19 (22) Code Section 31-36A-5, relating to certification by a physician;
- 20 (23) Code Section 31-36A-7, relating to petition for order by a health care facility;
- 21 (24) Code Section 38-4-2, relating to powers of veterans' home administrators; and
- 22 (25) Code Section 49-2-14, relating to record searches for conviction data on prospective
23 employees.

24 **SECTION 17.**

25 This Act shall become effective only for the purposes of promulgating rules and regulations
26 thereunder upon its approval by the Governor or upon its becoming law without such
27 approval. This Act shall become effective for all other purposes on January 1, 2006.

28 **SECTION 18.**

29 All laws and parts of laws in conflict with this Act are repealed.